

## RESPONSIVENESS SUMMARY

### on the Tentative Determination of Adequacy of Municipal Solid Waste Landfill Permit Program of Puerto Rico

#### INTRODUCTION

This document comprises the U.S. Environmental Protection Agency's (EPA) responses to comments received, both written and verbal, on the EPA's tentative determination of adequacy of the Commonwealth of Puerto Rico's Municipal Solid Waste Landfill Permit Program.

#### BACKGROUND

Section 4005(c)(1)(B) of the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs. Approved State/Tribe permit programs provide for interaction between State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Puerto Rico applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Puerto Rico's MSWLF application and certain revisions thereto, and made a tentative determination that all portions of Puerto Rico's MSWLF permit program were adequate to assure compliance with the revised Federal Criteria. EPA's tentative determination on the adequacy of Puerto Rico's permit program was published in the Federal Register on March 23, 1994 (59 FR 13717).


Puerto Rico's application for program adequacy determination and its revisions were available for public review and comment at the EPA Region II Caribbean Field Office in San Juan and at the EPA Region II Library in New York City. The public comment period commenced on March 23, 1994 and ended on May 26, 1994. The public comment period was originally scheduled to end on May 12, 1994. However, at a public hearing held on May 12, 1994, a request was made to extend the comment period and EPA responded by extending the comment period until May 26, 1994.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the

Region scheduled four public hearings on this tentative determination. Two public hearings were held at the premises of the Solid Waste Management Authority in Hato Rey, Puerto Rico on May 11, 1994. Two additional hearings were held at the Mayagüez City Hall in Mayagüez, Puerto Rico on May 12, 1994.

During the public comment period, two written comments were received and comments were presented at the public hearings by seven individuals. This document comprises the response to those comments received on the tentative determination of adequacy for the Municipal Solid Waste Landfill Permit Program of the Commonwealth of Puerto Rico.

After reviewing the public comments submitted in response to the tentative determination of adequacy, I conclude that Puerto Rico's application for an adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the Commonwealth of Puerto Rico is granted a determination of adequacy for all portions of its municipal solid waste permit program, effective with the publication of a Final Program Determination of Adequacy of Puerto Rico's Solid Waste Landfill Program in the Federal Register.

  
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8/17/94  
Date

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#### 1. COMMENT

A number of the comments received addressed the capability of the Environmental Quality Board (EQB) to adequately implement and enforce Puerto Rico's new municipal solid waste landfill (MSWLF) regulations. Some commenters expressed concern that the EQB would not effectively implement and enforce the new regulations based on examples they provided of problems they felt occurred or currently exist at particular landfill sites and which they felt that the EQB has not properly addressed. Landfills cited included those in Toa Alta, Arecibo, San Sebastian, and Aguadilla. Specific problems cited included not properly responding to citizen complaints, slowness to respond to violations, gas emissions and fires at the Toa Alta landfill, fear of an explosion at Toa Alta landfill, location of Arecibo landfill near an aquifer and Toa Alta landfill on a sink hole, lack of cover at Aguadilla landfill, and lack of cover for a period of 5 months at the San Sebastian landfill prior to its closure.

#### EPA RESPONSE

A new structure for implementing and enforcing the new MSWLF permit program has been created at the EQB, which EPA Region II has determined to be adequate. We feel that the problems cited by commenters, which have occurred in the past, should be largely eliminated under the EQB's new program. EPA's tentative determination of adequacy was made based upon the new regulations and procedures contained in EQB's new permit program, which was provided in the revised application submitted to the EPA by EQB on February 17, 1994, as well as the commitments made to us by the leadership at EQB. Subsequent to the public comment period, EPA requested that the EQB submit a comparison of their previous permit program to the new program in order to more clearly illustrate what changes have occurred in the structure of their program. This information is described below and is intended to demonstrate why EPA Region II feels that problems related to regulatory oversight at landfills that may have occurred in the past will be adequately addressed under the new program.

#### Implementation and Enforcement Resources

A new management and staffing structure has been developed at the EQB to implement the new permit program. Most significantly, a new Non-Hazardous Waste Bureau has been created. The new Bureau is comprised of 6 full-time staff: 1 branch chief, 1 section chief and 4 full-time technicians. The Bureau will work exclusively on MSWLF permitting, inspection, and enforcement

matters. Substantial permitting and inspection support will also be provided by EQB regional offices, which comprise 18 people in total. In addition, 4 attorneys from EQB's Legal Division will be assigned to the Bureau to assist in the regulatory enforcement process.

By comparison, under the previous MSWLF permit program, the Non-Hazardous Waste Bureau did not exist. Under this program, three individuals had full-time responsibility for oversight of Puerto Rico's MSWLFs. The formal designation of EQB attorneys to assist in Regulatory enforcement, and the implementation support from EQB regional offices are also new to the program.

#### Staff Training

The development and implementation of the Non-Hazardous Solid Waste Management Regulations has provided EQB technical staff with significant new training opportunities. To date, EQB staff has received a minimum of 256 hours of training on implementation and enforcement of the new Regulations. By comparison, EQB staff received 40 hours of inspection and compliance training under the previous permit program.

#### Inspections and Enforcement

New authority and resources will enable the Non-Hazardous Waste Bureau to conduct semi-annual inspections at all landfills. In comparison, inspections took place only once per year or in some cases every other year under the previous program.

Solid Waste Management Authority technicians will inspect MSWLFs an average of 2 to 3 times per year, and more frequently where operational or administrative problems exist. Whereas these inspection reports were not shared with EQB in the past, EQB now has access to these reports which help the Bureau to establish its own inspection and enforcement priorities.

EQB states that it now has adequate resources to respond quickly and effectively to all problematic conditions identified during inspections. In addition, the new program requires landfills to establish internal monitoring programs, which should help to ensure regulatory compliance.

Since 1991, 31 MSWLFs have been closed on the island. The facilities that remain open are subject to the new regulatory program, and have either received, or are in the process of receiving permits and compliance plans. The reduced number of landfills allows increased attention to those remaining.

#### Public Participation

EQB's complaint office and the Non-Hazardous Waste Bureau will work jointly to collect and respond to public complaints. Step-by-step procedures for receiving and responding to public complaints were developed for the new Regulations and did not exist previously.

## 2. COMMENT

One commenter's testimony, provided both in writing and at the 1:00 hearing on May 11, asserted that the Regional Site Facility Plan by the Solid Waste Management Authority (SWMA) is a violation of the Environmental Public Policy Law of Puerto Rico that requires a public hearing. In addition, the commenter felt that the failure to perform an environmental impact statement (EIS) on the regional plan is a violation of the law.

### EPA RESPONSE

While this issue is not pertinent to the approval of EQB's permit program, we do offer the following comments.

SWMA has reported to the EPA that it will be writing a programmatic EIS, which means that an EIS will be performed for all of Puerto Rico regarding the concept of the entire Regional Site Facility Plan. Five Public Hearings will then be held by SWMA on The Regional Site Facility Plan in different locations across the island. Afterwards, SWMA plans to write an EIS on each facility outlined by the Plan and to follow up by conducting separate public hearings for each site. In any event, the Attorney General of the Commonwealth of Puerto Rico has certified to EPA that the landfill regulations on which EPA's approval is based have been lawfully adopted.

## 3. COMMENT

At the 1:00 public hearing on May 11, one commenter claimed that the Director of SWMA had stated that he would not comply with Puerto Rico's Recycling Law.

### EPA RESPONSE

While this too is not pertinent to the approval of EQB's permit program, we offer the following comments.

SWMA has reported to the EPA that the Agency intends to comply with Puerto Rico's Recycling Law, but is behind schedule. SWMA asserts that a number of activities required by the Law are already being performed by the Agency. For example, the agency has conducted demonstration projects, developed an islandwide recycling plan, which will be available for public comment, is currently receiving and evaluating municipal recycling plans, developing regulations governing the collection and processing of recyclables, and is working with different Puerto Rican agencies to develop an incentives program to build the markets for recyclables on the island.

## 4. COMMENT

One commenter at the 7:00 hearing on May 11 asked in his testimony how the EPA guarantees that the EQB will be able to adequately supervise the disposal of the majority of solid waste in Puerto Rico?

## EPA RESPONSE

The Federal regulations set minimum national standards applicable to municipal solid waste disposal, and local governments are responsible for actually implementing and enforcing commensurate solid waste programs. Since implementation is primarily a state function, states are required to develop their own programs based on the Federal regulations. EPA's role is to evaluate states' programs and decide if they are adequate to ensure safe disposal of municipal solid waste. This determination is made based on the review procedure discussed in response to Comment number five below. EPA does not have the authority to enforce the regulations in an approved state. However, in cases where an approved state can be shown to have not effectively implemented the program, EPA may, after public notice and comment, withdraw the determination of adequacy for that state's program and thereafter assume enforcement.

Furthermore, Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

### 5. COMMENT

A commenter at the 7:00 hearing on May 11 argued that a determination to delegate is being made without analyzing the work of the EQB and the EQB's compliance with its responsibilities and without any institutional changes being proposed to allow the board to implement the regulations.

### RESPONSE

The EQB did make a number of institutional changes in order to allow its agency to comply with the new Federal Regulations. These changes to EQB's structure and the basis for EPA's determination of adequacy are outlined in the EPA response to comment number 1 above.

### 6. COMMENT

One comment provided both in writing and at the 1:00 hearing on May 11, commented that the Regional Site Facility Plan by the Solid Waste Management Authority is a violation of President Clinton's Executive Order on Environmental Justice due to the fact that locations chosen for Regional landfills are in low income communities. In addition, a commenter during the 7:00 hearing on May 11 also pointed to the location of landfills in poor communities as a problem in Puerto Rico.

## EPA RESPONSE

The Presidential Executive Order on Environmental Justice requires that the EPA, to the greatest extent practicable and permitted by the law, identify and address, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. The EPA is currently engaged in preparing an agency-wide national strategy to implement this Order. In addition to existing laws and regulations, the Federal Government, including EPA, will establish procedures to implement the President's Executive Order concerning environmental justice. These concerns will also be given consideration during the public hearings planned by SWMA, which are discussed in response to comment 2 above. EPA also notes that existing EPA regulations (40 CFR Part 7), implementing Title VI of the Civil Rights Act of 1964, prohibit any person (including a local government unit) who receives assistance from the Federal government from practicing discrimination under any program or activity (including siting). These powers are very rarely used and the process is very laborious.

## 7. COMMENT

One commenter at the 7:00 hearing on May 11, expressed concern that there is a conflict of interest between two government agencies, SWMA and EQB, which are both working on the administration of landfills. Specifically, this commenter noted that SWMA is designing the Regional Site Facility Plan with which EQB is expected to comply.

## EPA RESPONSE

As explained in EQB's application to the EPA for determination of adequacy of Puerto Rico's MSWLF permit program, EQB and SWMA are organized in such a way that they will work in coordination to administer the new program. Pursuant to its authority under section 1305 of the Puerto Rico Solid Waste Management Authority Act, Act No. 70, June 23, 1978, as amended, (Attachment 13), SWMA will provide technical and financial assistance to sanitary landfills in the Commonwealth. SWMA will provide support to the EQB by inspecting sanitary landfills 2 to 3 times a year, and more frequently where operational problems exist. Reports prepared by SWMA technicians will be used by the EQB to establish inspection and enforcement priorities.

With respect to the Regional Site Facility Plan, EQB reports that while SWMA was primarily responsible for identifying tentative locations of regional facilities, final siting will not occur until: (1) environmental impact statements are prepared and subjected to public and inter-agency review and (2) EQB, pursuant to its legal authority under the Puerto Rico Environmental Public Policy Act, reviews the regional site facility plan. The final regional site facility plan will be the product of public and inter-agency comments and, if necessary, EQB modification. Therefore, no one agency will have exclusive authorship and both SWMA and EQB will have a role in finalizing the plan.

#### 8. COMMENT

Puerto Rico presents a different ecological situation than is found in the States, one where it is more difficult to find a suitable location for a landfill. The Federal Government should modify its regulations for location criteria of municipal solid waste landfills. The regulations could take into account that there are locations with different situations. This law should be different for different states, depending upon their particular situation.

#### EPA RESPONSE

Congress asked that the EPA write criteria for MSWLFs in order to protect human health and the environment. These Federal regulations, known as 40 CFR Part 258, have been written such that they are reflective of conditions from one state to another. This is done mainly through flexibility options that are written into the regulation and are available to the director of an approved state. 40 CFR Part 258.10 (Subpart B) of the Federal regulations contains restrictions for siting landfills in wetlands (Part 258.12(a)), fault areas (Part 258.13(a)), and seismic impact zones (Part 258.14(a)), but allows the director of an approved state to consider local conditions when siting a landfill in these areas. We at EPA Region II feel that restricting the location of landfills in sensitive areas, while providing sufficient flexibility to consider local situations, is the best combination for protecting human health and the environment.

#### 9. COMMENT

One written comment received from the National Institutes of Health concerned the issue of property boundaries around the Bayamon landfill, which is within the purview of the local authority. The commenter asserted that the landfill has encroached on the Institute's property and that existing regulations have not been followed at the landfill to the date of his letter, April 1, 1994. In addition, the commenter expressed concern that a new permit program would not ensure that the landfill will comply with new requirements including property line locations and monitoring.

#### EPA RESPONSE

The issue of property lines is not within the purview of this determination and needs to be addressed by local authorities. Regarding, the commenter's concern about improper monitoring of the landfill, we ask that you refer to EPA's response to Comment number 1 above where improvements to EQB's permitting and enforcement program are discussed.

10. COMMENT

At the 7:00 hearing on May 11, one commenter suggested that Puerto Rico's regulations for location of a MSWLF and groundwater protection at MSWLFs do not meet the Federal criteria.

EPA RESPONSE

EPA Region II has analyzed Puerto Rico's Non-Hazardous Solid Waste Management Regulation, which was a component of Puerto Rico's application, as a part of the review process to make a determination of adequacy. We have determined that Puerto Rico's regulation was at least as stringent as the Federal regulations for location restrictions and groundwater protection at MSWLFs.

